

§ 204.41

17 CFR Ch. II (4–1–03 Edition)

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before the debt is fully repaid, the remaining indebtedness will be offset pursuant to 31 U.S.C. 3716 and the FCCS.

(1) To the extent possible, the remaining indebtedness will be liquidated from any final payment due the former employee as of the date of separation (e.g., final salary payment, lump-sum leave, etc.). See § 204.40d(3), Offset deductions from final salary and/or lump-sum leave payment.

(2) Thereafter, the remaining indebtedness will be recovered from later payments of any kind due the former employee from the United States. See the FCCS.

(c) *Method of collection and source of deduction.* The method of collecting debts under these regulations shall be by salary offset. Deductions will be made from the employee's current disposable pay account except as provided for in § 204.34b, Employee response.

(d) *Amount and duration of deductions.* Debts must be collected in one lump sum where possible. If the employee demonstrates financial hardship to the Commission's satisfaction or the amount of the debt exceeds 15 percent of the indebted employee's current disposable pay, collection must be made in installments over a period not greater than the anticipated period of active employment, except as provided in Section 34b, Employee Response.

(1) Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay.

(2) The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payment of less than \$100 per pay period will be accepted only in the most unusual circumstances.

(3) Offset deductions from final salary and/or lump-sum leave payment. Such an offset deduction may exceed 15 percent of an employee's final salary and/or lump-sum leave payment pursuant to 31 U.S.C. 3716, 64 CG 907.

(e) Interest, penalties and administrative costs on debts under this part will be assessed and/or waived according to the provisions of 31 CFR 901.9.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54132, Oct. 26, 2001]

§ 204.41 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 204.42 Refunds.

(a) The Commission will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The Commission is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 204.43 Coordinating offset with another federal agency.

(a) *Responsibility of the Commission as the Creditor Agency.* When possible, salary offset through the centralized administrative offset procedures in 5 CFR 550.1108 shall be attempted before applying the procedures in this section. If centralized administrative offset is not possible, the Commission shall request recovery from the current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, 5 CFR 550.1109 the Commission must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued and that the Commission's regulations implementing 5 U.S.C. 5514 have been approved by OPM.